IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1742 OF 2005

1.M/s Desh Chemicals Pvt. Ltd.
& Ors. ... Applicants

V/s

1 M/s BASP Chemicals Products
Ltd. ... Respondents

Shri Anilkumar Patil for applicants
Shri A.M. Shingarpure, APP for the State

Coram : V.M. Kanade, J.
Dated : 28.03.2005.

P.C. :-

. I have heard learned counsel for applicants and APP for the State.

. This is application by original accused No.1 to 3 challenging the issuance of process. The complaint was filed by respondent No.1 under section 138 read with section 141 of Negotiable Instruments Act.

. It is submitted by learned counsel appearing for applicants that there is privity of contract between applicants No.1 to 3 with respondent No.1, company. It is submitted that cheques were issued by accused No.4 and, therefore, applicants i.e original accused Nos.1 to 3 have

no concern with transaction in question and, therefore, the order of process is liable to be recalled. I am unable to accept submission made by learned counsel appearing for applicants. In paragraph No.2 of the complaint there are specific averments that accused No.1 is a company and accused Nos. 2 and 3 are overall incharge of affairs of accused No.1 company as their Directors and are looking after and are responsible for day to day activities and affairs of accused No.1 company. In paragraph No.3 of the complaint, it is averred that complainant sold and delivered the goods to accused No.1 company on order placed by accused No.2 and accused No.4 issued cheques under covering letter dated 15/09/2001 towards the discharge of the said dues of accused No.1 company. Therefore, at this stage, it cannot be seen that there is no privity of contract between applicant and respondent No.1 company. This can be decided only after evidence is adduced by both parties in the learned trial court. All questions raised in this application are kept open. The learned trial court is directed to consider all these questions raised in this application by applicants after evidence is adduced by both parties on merits and in accordance with law. Accordingly, this application is dismissed on above terms.

(V.M. Kanade, J.)